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25 RESORT, LLC; LAS VEGAS SANDS, LLC, and LAS
26 VEGAS SANDS CORP

27 **IN THE UNITED STATES DISTRICT COURT**
28 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JONATHAN BROWNING, INC.,

Plaintiff,

v.

VENETIAN CASINO RESORT, LLC, et al.,

Defendants.

Case No.: C 07-3983 JSW

**AMENDED JOINT CASE
MANAGEMENT STATEMENT**

Date: June 20, 2008
Time: 1:30 p.m.
Place: Courtroom 2
Judge: Hon. Jeffrey S. White

Pursuant to the Order Granting Motion to Compel Arbitration and Stay Matter and Continuing Case Management Conference of June 11, 2008, Plaintiff Jonathan Browning, Inc. ("Jonathan Browning") and Defendants Venetian Casino Resort, LLC, Las Vegas Sands, LLC, and Las Vegas Sands Corp. (collectively "Defendants"), have conferred with respect to the agenda items

1 listed in the Standing Order for All Judges of the Northern District of California - *Contents of Joint*
2 *Cases Management Statements*. Accordingly, the parties submit this Amended Joint Case
3 Management Statement.

4 **1. Jurisdiction and Service**

5 Jonathan Browning alleges that the Court has subject matter jurisdiction over this action
6 pursuant to 28 U.S.C. §§ 1331, 1332 and 1338(a) and 17 U.S.C. § 411(a). Defendants respectfully
7 disagree; however, the Court's December 19, 2007 Order ruled that it has personal and subject
8 matter jurisdiction and that venue is proper in this District under 28 U.S.C. § 1400(a) and 28 U.S.C.
9 § 1391(b). All parties have been served.

10 **2. Facts**

11 **A. Plaintiff's Statement of the Facts**

12 Plaintiff Jonathan Browning is a California corporation that designs and supplies high-end
13 decorative interior lighting fixtures. In April 2006, the Venetian asked Jonathan Browning to bid on
14 a project to provide more than 11,000 sconces to be used in the Venetian's guest rooms and corridors
15 as part of Defendants' Venetian Tower Remodel Project at the Venetian Casino Resort in Las Vegas,
16 Nevada. Ostensibly as part of its evaluation process, the Venetian purchased ten sample Jonathan
17 Browning sconces to be used in a mock-up so the casino could decide whether to accept Jonathan
18 Browning's bid.

19 Jonathan Browning submitted a bid to the Venetian, offering to provide 11,368 sconces at a
20 discounted price. The Venetian declined the bid, stating that the price was too high. The Venetian
21 then proceeded to copy, or had others copy, the designs on the sample Jonathan Browning sconces.
22 The Venetian has installed in its guest rooms and corridors thousands of copies of Jonathan
23 Browning's sconces, for which it paid Jonathan Browning nothing. Jonathan Browning sues for
24 violation of the Copyright Act and for state-law contract and unfair business practices claims.

25 **B. Defendant's Statement of the Facts**

26 Venetian *et al.*'s investigation is ongoing. Venetian *et al.* reserve all rights to contest the
27 facts set forth in the Complaint and restated herein.

28 Plaintiff apparently filed two applications for copyright registration for the two lighting

1 fixtures at issue in this case. Plaintiff's copyright applications were both denied by the U.S.
2 Copyright Office. Therefore, there is a presumption that the Plaintiff's light fixtures are not entitled
3 to copyright protection and cannot be infringed. Venetian *et al.*'s position is that, consistent with the
4 decision of the U.S. Copyright Office, lighting fixtures are not entitled to copyright protection.

5 **3. Legal Issues**

6 **A Plaintiff's Statement of Issues:**

7 The primary legal issues in the case are: (a) the copyrightability of the sconce designs at
8 issue in this case, (b) whether the Venetian unlawfully copied those designs, and (c) whether the
9 Venetian's alleged conduct in the bid process gives rise to an unfair business practice claim.
10 Jonathan Browning does not intend this as a complete list of issues in the case, but rather as a
11 summary of the primary issues for the Court's benefit in scheduling events for the case.

12 **B. Defendants' Statement of Issues:**

13 Given the early status of this litigation, Defendants cannot identify all of the issues presented
14 by this case. Based upon the complaint, however, the following legal issues are currently at issue:

15 A. Whether or not the Plaintiff's light fixtures are entitled to protection under the Copyright
16 Act.

17 B. Whether or not Venetian violated Plaintiff's alleged copyright by creating unauthorized
18 copies of its lighting fixtures.

19 C. Whether or not Venetian violated Plaintiff's alleged copyright by publicly displaying any
20 unauthorized copies of Plaintiff's lighting fixtures.

21 D. Whether or not Venetian violated Plaintiff's alleged copyright by inducing the
22 infringement of a third party manufacturer in China.

23 E. Whether or not Venetian violated Plaintiff's alleged copyright by contributing to the
24 infringement of a third party manufacturer in China.

25 F. Whether or not Venetian is vicariously liable for copyright infringement for alleged
26 copying by a manufacturer in China.

27 G. Whether or not Venetian's alleged infringement was intentional and willful.

28 H. Whether or not Venetian violated common law unfair competition.

1 I. Whether or not Venetian violated California Business & Professions Code §§ 17200, *et*
 2 *seq.*

3 J. Whether and to what extent Plaintiff is entitled to actual damages pursuant to 17 U.S.C. §
 4 504.

5 K. Whether and to what extent Plaintiff is entitled to restitution and disgorgement damages.

6 L. Whether and to what extent Plaintiff is entitled to compensatory damages.

7 M. Whether and to what extent Plaintiff is entitled to punitive damages.

8 N. Whether and to what extent Plaintiff is entitled to pre- and post-judgment interest.

9 O. Whether and to what extent Plaintiff is entitled to injunctive relief.

10 P. Whether and to what extent Plaintiff is entitled to impounding and destruction of alleged
 11 copies pursuant to 17 U.S.C. § 503.

12 Q. Whether or not this Court has personal jurisdiction over defendant Las Vegas Sands
 13 Corp.¹

14 R. Whether or not this Court has personal jurisdiction over defendant Las Vegas Sands LLC.

15 S. Whether or not this Court has personal jurisdiction over defendant Venetian Casino
 16 Resort LLC.

17 T. Whether the Northern California District Court is the proper venue.

18 U. Whether Plaintiff has stated a claim against Las Vegas Sands Corp. or Las Vegas Sands
 19 LLC.

20 V. Whether Plaintiff's state law claims for unfair competition are preempted by the
 21 Copyright Act.

22 **4. Motions**

23 Both Plaintiff and Defendants presently anticipate filing a motion for summary judgment.
 24 The parties also expect that there will be motions in *limine* with regard to the exclusion of evidence
 25 at trial.

26 _____
 27 ¹ Defendants recognize that the Court has made a ruling regarding this issue in connection with a
 28 Motion to Dismiss. However, as this action continues, Defendants believe that issues regarding
 jurisdiction and venue remain either before this Court or a court of appeals.

1 **5. Amendment of Pleadings**

2 Plaintiff and Defendants do not expect that claims or defenses will be added or dismissed.

3 **6. Evidence Preservation**

4 **A. Plaintiff's Statement**

5 Jonathan Browning has ensured that no electronic or hard copy evidence relevant to issues
6 reasonably evident in this action will be destroyed. Jonathan Browning served Venetian with a letter
7 regarding hard copy and electronic document retention on August 2, 2007.

8 **B. Defendants' Statement**

9 Defendants have taken reasonable steps to ensure that evidence reasonably relevant to this
10 action is preserved.

11 **7. Disclosures**

12 The parties have all made their initial disclosures.

13 **8. Discovery**

14 The parties agree that the presumptive limitations on discovery set forth in the Federal Rules
15 of Civil Procedure (*e.g.*, Fed. R. Civ. Proc. 30(a)(2)(A)) shall apply, unless good cause later comes
16 to exist for the Court to modify those limits. The parties agree that electronic documents will be
17 exchanged in a reasonably useable format. The parties propose that the electronic documents be
18 exchanged primarily in PDF or TIFF format. The parties agree to meet and confer to determine what
19 search terms will be used for electronic discovery.

20 Jonathan Browning has served requests for the production of documents on Venetian *et al.*
21 on January 31, 2007. Venetian *et al.* served requests for production of documents on Plaintiff on
22 February 6, 2007. However, no documents have been produced by either party. Both parties intend
23 to produce documents once the Stipulated Protective Order has been entered. The Stipulated
24 Protective Order was filed on June 12, 2008 and entered by the Court on June 13, 2008. While no
25 documents have produced in response to the discovery requests, the parties have exchanged a limited
26 set of documents under the mediation privilege. Plaintiff submits that the documents it produced
27 constitute 275 out of approximately 300 pages of documents that it will be produced in response to
28 Defendants' requests.

1 No depositions have taken place. Defendants are scheduled to take the deposition of the
2 person most knowledgeable at Jonathan Browning on June 19, 2008. No other depositions have
3 been scheduled.

4 **9. Class Action**

5 This case is not a class action.

6 **10. Related Cases**

7 The parties know of no related proceedings.

8 **11. Relief**

9 Jonathan Browning seeks declaratory judgment; injunctive relief; an order directing the
10 impounding and destruction or other reasonable disposition of all copies made in violation of
11 Jonathan Browning's exclusive rights, and of all plates, molds, masters, or other articles by means of
12 which such copies may be reproduced; recovery of full costs pursuant to 17 U.S.C. § 505; actual
13 damages pursuant to 17 U.S.C. § 504, including lost profits, plus Defendants' profits from
14 infringement, as will be proven at trial; restitution and disgorgement; compensatory and punitive
15 damages; pre- and post-judgment interest according to law; and such other and further relief as the
16 Court deems just and proper.

17 **12. Settlement and ADR**

18 The parties met on April 3, 2008 before a JAMS mediator. The parties were unable to
19 resolve this case or any disputes then pending.

20 **13. Consent to Magistrate Judge for All Purposes**

21 The parties have declined to proceed before a Magistrate Judge for all purposes.

22 **14. Other References**

23 The parties do not presently believe that the case is suitable for binding arbitration or special
24 master.

25 **15. Narrowing of Issues**

26 The parties are unable to narrow any issues by agreement at this time. The parties anticipate
27 that the issues may be narrowed through Motions for Summary Judgment.

28

1 **16. Expedited Schedule**

2 The parties agree that this case does not require an expedited schedule.

3 **17. Scheduling**

4 The Court has entered the following schedule:

5	Trial:	February 23, 2009
6	Pre-Trial Conference:	February 2, 2009
7	Last day for hearing dispositive motions:	November 21, 2008
8	Completion of Expert Discovery:	October 3, 2008
9	Rebuttal Expert Disclosure:	September 12, 2008
10	Discovery Cutoff (non-expert):	August 29, 2008
11	Expert Witness Disclosure:	August 29, 2008
12	Mediation Deadline:	May 8, 2008

13 **A. Plaintiff's Proposal.**

14 The schedule agreed to by the parties, and entered by the Court, provides all parties with
 15 sufficient time to complete discovery and prepare for trial. The amount of discovery in this case is
 16 very limited. Plaintiff has a total of approximately 300 pages of documents to produce, 275 of
 17 which were already provided to Defendants as part of the pre-mediation document exchange. It is
 18 unclear the total number of documents Defendants will produce, but given the very specific nature of
 19 the claims, Plaintiff does not believe there should be over 1000 pages produced by Defendant.
 20 Additionally, Plaintiff does not currently anticipate taking more than four depositions in this matter,
 21 and estimates that total number of deposition will not exceed ten.

22 Defendants have noticed one deposition, which notice was timely objected to based on the
 23 fact that Defendants failed to meet and confer regarding the time of the deposition. A timely
 24 objection is not an intentional delay. On May 29, 2008 Defendants then re-noticed the deposition for
 25 June 12, 2008, again without conferring on timing. Though Plaintiff's new counsel had not formally
 26 substituted in, he immediately contacted Defendants' counsel and explained that June 12, 2008
 27 would not work. Both the deponent and Plaintiff's counsel were not available that day. Plaintiff's
 28 counsel offered several dates the following week, and the parties agreed on June 19, 2008. Thus,

1 though Defendants' failed to confer about timing prior to noticing their deposition, the date finally
2 agreed upon is only one week later than the proposed date.

3 Though Plaintiff anticipates that very few electronic documents will be produced in
4 discovery, the parties met and conferred on June 13, 2008 regarding electronic discovery.
5 Defendants agreed to provide a list of proposed terms, and Plaintiff anticipates that, once Defendants
6 provide such a list, agreement upon such terms will come very quickly.

7 Plaintiff has already provided Defendant with nearly all of the documents that will be
8 provided in response to the request for production of documents. The deposition that Defendant
9 unilaterally scheduled was only moved back one week. Finally, the parties currently are working on
10 the proposed search terms for electronic discovery. Unless and until the parties experience
11 discovery disputes that actually impede discovery, no changes should be made to the current
12 schedule.

13 **B. Defendants' Proposal**

14 The parties agreed to a six month period for discovery. However, the parties were hopeful
15 that this case could be resolved through mediation without the need to incur the expense of formal
16 discovery. As such, the parties stipulated to a stay of discovery pending the outcome of the
17 mediation, in the hopes that costs could be avoided if the mediation was successful. Unfortunately,
18 the parties were unable to resolve the dispute at the mediation, which took place on April 3, 2008.

19 Thereafter, each party served Responses to the Request for Production of Documents
20 exchanged prior to the mediation. However, no documents have produced by either party.

21 For almost two months now, Defendants have been trying to schedule a time to take the
22 threshold deposition of the person most knowledgeable at Jonathan Browning as to certain key
23 subjects. A copy of Defendants' original deposition notice is appended hereto as Exhibit A.
24 Defendants had intended that this deposition would inform Defendants what additional deponents
25 and discovery were needed.

26 Counsel for Defendants served their original notice for this deposition (Exhibit A) on April
27 25th. Defendants were not informed that Jonathan Browning was unavailable on the noticed date
28 until May 8, 2008 when Plaintiff served its objections. On May 12, 2008 Defendants requested an

1 alternative date for the deposition. Plaintiff did not respond. On May 20th, counsel for Defendants
2 requested that Plaintiff respond to the May 12, 2008 letter and provide an alternative date for this
3 deposition. Again, Plaintiff did not respond. During a telephonic meet and confer between counsel
4 for all parties on May 22, 2008, counsel for Defendants again asked for an alternative date for the
5 deposition. Counsel was stonewalled by Plaintiff's counsel who stated that he could not provide an
6 alternative date, and could not state when he would be available to do so. After another week went
7 by with no response to the request for a deposition date, Defendants served an amended notice of
8 deposition on May 29th, seeking to depose the person most knowledgeable at Jonathan Browning on
9 June 12, 2008. The following week, new counsel substituted in for Plaintiff and informed counsel
10 for Defendants that Plaintiff would not appear on June 12, 2008. Thus, the deposition was delayed
11 even further until June 19, 2008. No other depositions have been scheduled.

12 Thus, the original six month period of discovery has now been reduced to a two month
13 period. Two months were lost while the parties tried to reach a settlement and two months were lost
14 when Plaintiff intentionally delayed discovery for two months, while it retained and substituted in
15 new counsel. During that time, Defendants have refused to meet and confer regarding electronic
16 discovery, scheduling Plaintiff's deposition, and Stipulated Protective Order. As a result of the
17 foregoing, not a single deposition has occurred, nor has a single document been produced. The first
18 deposition is not scheduled to occur until June 19, 2008.

19 In addition to the loss of four months of discovery time, due in part to Plaintiff's intentional
20 delay, it appears that the parties have significant disputes regarding Plaintiff's refusal to produce
21 documents that are particularly relevant to Plaintiff's claims. The refusals include, but are not
22 limited to refusals to provide any financial documents and documentation relating to Plaintiffs
23 overhead costs, which are directly relevant to the calculation of Plaintiff's alleged lost profits.
24 During the June 13, 2008 meet and confer, Plaintiff's counsel made it clear that Plaintiff will not
25 produce any of the requested documents. As such, Defendants anticipate filing a motion seeking to
26 compel the production of these and other relevant documents.

27 Finally, Defendants have a significant amount of electronic data to capture, filter and review.
28 Since the parties have not yet reached agreement on the search terms, Defendant's cannot estimate

1 how much data will have to be reviewed once the filtering and search terms have been applied.
 2 However, based on counsel's prior experience with electronic discovery, it frequently takes one to
 3 two months or more, depending on the data set to review the data once it has been extracted and
 4 culled.

5 Defendants have requested that Plaintiff stipulate to extend the trial dates, but Plaintiff has
 6 refused Defendants' request. Thus, Defendants request the Court enter an Order amending the trial
 7 dates so that Defendants will not be prejudiced by Plaintiff's intentional delays. Defendants propose
 8 the following schedule for future proceedings:

9	Trial:	May 25, 2009
10	Pre-Trial Conference:	May 8, 2009
11	Last day for filing dispositive motions:	March 13, 2009
12	Completion of Expert Discovery:	February 27, 2009
13	Rebuttal Expert Disclosure:	January 30, 2009
14	Discovery Cutoff (non-expert):	December 19, 2008
15	Expert Witness Disclosure:	December 19, 2008

16 **18. Trial**

17 Jonathan Browning has demanded a jury trial. The parties currently anticipate the trial may
 18 last 5-7 days, although Defendants reserve the right to modify this estimate based upon the claims
 19 and plaintiff damage theories that are allowed to proceed, if any.

20 **19. Disclosure of Non-party Interested Entities or Persons**

21 The parties have filed disclosures according to Civil L.R. 3-16 (Docket Nos. 7 and 15).

22
 23 Dated: June 13, 2008

DUANE MORRIS LLP

24
 25 By: s/Michelle A. Hon
 26 Ray L. Wong
 27 Michelle Hon
 28 Attorneys for Defendants VENETIAN CASINO
 RESORT LLC; LAS VEGAS SANDS LLC, and LAS
 VEGAS SANDS CORP.

1 Dated: June 13, 2008

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5 Attorneys for Plaintiff Jonathan Browning, Inc.
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